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In re Application of: :
TARTE, Frederic, et al. : DECISION
U.S. Application No.: 10/556,664 :
PCT No.: PCT/SE2004/000642 :
International Filing Date: 28 April 2004 :
Priority Date: 12 May 2003 :
Atty Docket No.: 12400-050 :
For: A STEERING WHEEL :
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This decision is issued in response to the "Petition Under 37 CFR 1.181(a) Requesting Withdrawal Of The Holding Of Abandonment" filed 21 February 2008. No petition fee is required.

BACKGROUND

On 28 April 2004, applicants filed international application PCT/SE2004/000642. The international application claimed a priority date of 12 May 2003, and it designated the United States. On 18 November 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 12 November 2005.

On 11 November 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 27 September 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that a properly executed oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing this declaration later than thirty months after the priority date were required.

On 31 January 2008, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a timely response to the Notification Of Missing Requirements.

On 21 February 2008, applicants filed the petition under 37 CFR 1.181 to withdraw the holding of abandonment considered herein. The petition asserts that, on 17 October 2006, applicants filed via facsimile a timely response to the Notification Of Missing Requirements, including a fully executed declaration and the authorization to charge applicants for the required surcharge.

DISCUSSION

The petition states that a response to the Notification Of Missing Requirements, including an executed declaration and surcharge payment, was filed by facsimile on 17 October 2006. Exhibit A to the petition is ten pages identified as a copy of the 17 October 2006 submission; these materials include an executed declaration. Exhibit B to the petition is an "Auto-Reply Facsimile Transmission" generated by the USPTO, which indicates receipt of a 10-page facsimile transmission on 17 October 2006 and bears a reduced-size version of applicant's facsimile cover sheet. Exhibit 3 to the petition is a copy of the Transmission Verification Report from applicant's facsimile machine, which also confirms a ten-page transmission on 17 October 2006 and bears a reduced-size version of applicant's facsimile cover sheet.

37 CFR 1.8(b) states the following:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

With regard to item (1) above, the present petition was filed promptly after the mailing of the Notification of Abandonment.

With regard to item (2) above, the petition states that the response filed 17 October 2006 "is attached as Exhibit A." Exhibit A consists of ten total pages, including an executed declaration, and the first page of includes a Certificate Of Facsimile Transmission" executed by an "M. Collins."

With regard to item (3) above, section 512 of the MPEP states the following: "If the person signing the statement did not sign the certificate of mailing, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission." The present petition is signed by Steven L. Oberholtzer and, as noted above, the petition indicates that the response filed 17 October 2006 is "attached as Exhibit A." However, the petition does not include an express statement confirming that the ten pages attached as Exhibit A are a true copy of the materials filed on 17 October 2006. Moreover, Mr. Oberholtzer is not the person who executed the Certificate of Facsimile Transmission for the 17 October 2006 transmission, and he does not state "how he has firsthand knowledge of the previous

mailing or transmission," as required by the MPEP (the petition does not include a confirming statement from "M. Collins," the person who signed the Certificate of Facsimile Transmission).

Based on the above, the present submission does not satisfy the requirement of 37 CFR 1.8(b). Applicants must provide supplemental materials confirming that the ten page document attached as Exhibit A to the present petition is a true copy of the materials filed herein on 17 October 2006 (i.e., a statement from "M. Collins" confirming this fact on a firsthand basis, or a statement from counsel expressly confirming that the Exhibit is a true copy of the previously filed materials and indicating how counsel has firsthand knowledge of the previous transmission). Until such supplemental materials are provided, it cannot be concluded that the declaration and fee authorization included with the present petition were originally filed by facsimile on 17 October 2006 as a timely response to the Notification Of Missing Requirements.

CONCLUSION

For the reasons discussed above, applicants' petition to withdraw the holding of abandonment under 37 CFR 1.181 and 1.8(b) is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the mail date of the present decision and must include additional materials confirming that the ten page document attached as Exhibit A to the petition is a true copy of the materials filed herein on 17 October 2006, as discussed above and in the MPEP.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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